

ADEPT
Legal Commentaries

December 2003

Parliament activity, December 1-5, 2003

8 December 2003

As usual Parliament sessions were quite provocative in that both ruling party and opposition blamed each other. The spirits calmed down by the middle of the week and rose high again when the ruling party called on revoking the head of Commission on Social Protection and Healthcare, Lidia Gutu. The faction headed by Dumitru Braghis holds this position as decided based on the representation criteria.

One of the reasons cited for recalling Mrs Gutu was her participation in the unauthorised protest rallies and involving teenagers in political actions, as well as a number of flaws in running the Parliament commission. In particular the latter refers to absence from the plenary sessions, withholding from fulfilling the responsibilities of chairperson, etc.

Opposition viewed those accusations as an attempt of political revenge and again left the plenary session. Under the Parliament regulation, only the Parliament Speaker is entitled to make a proposition to recall the Commission Chairperson, after prior consultation with all parliamentary factions. Although scheduled, the consultation of the factions never really took place as opposition did not show up for the meetings with the Parliament Speaker. This fact did not stop the ruling party from passing the decision on revoking Mrs. Lidia Gutu and asked the Moldova Noastra faction to designate another person to the relevant position.

I. Resolution on the Conception of State Frontier Security

ADEPT Comment: The Conception approved by the Parliament includes a string of introductory provisions explaining why it was necessary to revise the current concept. The major reasons are as follows:

- Intensification of the international terrorism;
- Soaring migration;
- Soaring cross-border crime.

The general provisions provide for: objectives of frontier security; major state interests at the border area; major factors infringing national interests at the border; basic principles for frontier security (legality, human rights and freedoms, integrity, inalienable and inviolability of state frontiers, observance of international law, etc).

A special chapter provides the basic principles of frontier security, i.e. state prerogatives, fundamental tasks of the frontier policy (completing the delimitation of the frontiers and its juridical and international legalisation), co-operation with neighbourhood countries in view of fighting negative tendencies, co-ordination of the competent public authorities actions in view of developing frontier infrastructure.

Under the Resolution the Government is entrusted to enforce the Conception and within 3 months is to submit to the Parliament a draft law on the Border Guard Service of the Republic of Moldova.

Although it was declared to be a fundamental document on frontier security, the Conception does not include a series of elements that we believe it should have included. For instance the Conception does not include provisions on:

- Delimitation and security of the Eastern frontier (out of the Moldovan authorities control);
- Tasks of the border guard given the immediate vicinity of enlarged European Union;
- Tasks of the border guard in view of making the country more accessible and attractive to the tourists, investors and other foreigners visiting the country.

Having said that, the Conception has ended being a simple document outlining just general principles. It is still questionable whether those principles will be enforced given the lack of funds allotted in this respect.

II. Law on changing the deadline for installing fiscal memory cash registries at the petrol stations

ADEPT Comment: The Parliament extended the deadline for installing cash registers having fiscal memory from November 1, 2003 to April 1, 2004.

Government was forced to take such a decision due to the protests of the businessmen working in the field, as well as due to the failure of creating a state system of recording petrol circulation. At the same time MPs criticised the Government for the fact that although it was aware of the state of affairs well in advance, it let the situation slip out of control.

Government incapacity to solve the said problem was known even from November when the press was reporting that the great majority of petrol stations would be shut down, if the Government were to enforce the law accordingly. Government, however, waited for the deadline to expire and a week later addressed the Parliament to revise its own decision.

Given that lately the Parliament has been harshly criticising some members of the Cabinet, it is likely some of them to be called to resign and therefore be sacrificed on the altar of unsuccessful reforms initiated by the ruling party.

III. Law on cancelling the penalties and sanctions not paid by consumer co-operative societies

ADEPT Comment: The law exempts consumer co-operative societies from paying the penalties and fines calculated for the failure to transfer to the state budget income tax and social fund. The cost thereof is estimated at 10 million Lei.

Commencing 2001 the parliament majority constantly criticised the leadership of the consumer co-operative societies for poor administration of the assets, illegal privatisation of the assets and unwillingness to revive the co-operative movement. In response the former leadership cited the debts, which they believed hindered their activity and lead to the seizure of any revenues. At that time the proposition to exempt them from paying penalties and fines was seen as an attempt to conceal the embezzlement and avoid responsibility.

Currently, after the consumer co-operative leadership was replaced with a new one, which is supported by the ruling party, the attitude towards consumer co-operatives has also changed, even the President attended its recent Congress and promised to cancel their historic debts.

IV. Law on the modification of the Law on the Status of Elected Official

ADEPT Comment: By passing those amendments the Parliament brought the Law on the Status of Elected Official in accordance with the provisions of the new Law on Local Public Administration. In particular amendments refer to:

- 1. Termination of the mandate of the rayon Chair and Deputy Chairperson, Deputy Mayor:** upon incompatibility of functions; impossibility to exercise the functions for more than 4 months in a row; indictment; ousting from a position via a Council ruling; resignation or decease.
- 2. Incompatibility of the election official's mandate,** with the position of: MP; member of the Government; public official in the apparatus of rayon Chairperson, departments or other units in the subordination of the relevant council, mayoralty, or preture; officer in the territorial office of the State Chancellery; and with the position of councillor in a council of the same level or with the position of a councillor in a council of a different level in a second level administrative-territorial units.

V. Law on banning the import of packaging by economic units which do not recycle or destroy it

ADEPT Comment: The law bans the import of single use packaging material if the producer (retailer) does not possess a network to collect/ or recycle it without damaging the environment. The import of the said packaging would be banned unless a safe recycling method is found. The said provisions are likely to affect many domestic businesses that is why Parliament postponed their enforcement until 2005.

VI. Resolutions on appointments and oustings

ADEPT Comment: The Parliament accepted the resignation of the Prosecutor General Mr. Vasile Rusu and appointed Mr. Valeriu Balan to this position. The new Prosecutor General worked in prosecution and courts, and for the last ten years has been working in Information and Security Service.

Experts believe that those reshuffles may have some negative implications due to the long time rivalry between Prosecution and Information Service as both institution claim to know best how to defend the state security and engaged in criticism of each other on the grounds of inefficiency or even unlawfulness. Given that Prosecution is the single body overseeing the activity of the Information Service, we may conclude that the latter's power are now significantly strengthened. From now on it would be able to employ all the levers in its power without being afraid of Prosecution pointing to its violations.

Noteworthy, one week prior to the reshuffle, Parliament harshly criticised the Prosecution for the failure to undertake measures provided for by the law in repressing the protest rallies, whereas it praised the report submitted by the Information Service.

In addition, Parliament recalled the Chair of the Parliament Commission on Social Assistance, Healthcare and Family, Mrs. Lidia Gutu.

Via another resolution Parliament appointed a new member of the Court of Accounts, Mr. Gheorghe Cojocari, who previously worked in the Principal State Fiscal Inspectorate.

VII. Draft law on Alimentary Products

ADEPT Comment: The draft passed by the Parliament in the first reading is aimed at outlining the ground legal framework for the production, processing, distribution of quality alimentary products so as to safeguard peoples' health and protect consumers' rights.

The law provides some general definitions and outlines the subjects of the law. It also establishes a string of requirements for ensuring food safety. A separate chapter is providing for the state regulation of the food retail, certification of products prior to sale, state control in the field. The draft also envisages a procedure of testing, finding non-conformity, withdrawal from the market of the products that do not comply with the regulations, and destroying dangerous products.

Parliament activity, December 8-12, 2003

18 December 2003

I. Law on rectifying the Law on State Budget for Year 2003

ADEPT Comment: Via the amendments certain adjustments in the redistribution of revenues and expenses in the state budget were made. Noteworthy, the total amount thereof was not changed (this year budget provides for a profit of 300 million), neither was the 600 million loan from the National Bank. If it were not for the latter, next year's budget deficit would have been 300 million.

II. Law on the modification of the Law on Public Service

ADEPT Comment: The law stipulates that the Councillor of the Supreme Court of Justice Chairperson shall hold a I degree in the public service hierarchy, whereas the consultants, experts of the Court apparatus shall hold a II degree. Therefore, the status of Court officers was equalled to that of Government, Parliament and Presidency. The main reason for such modifications were to observe the constitutional principle whereby powers are equal, and therefore public servants working in each of them should be equal as well.

Noteworthy, prior to the adoption an estimation of the cost of the law was demanded, however neither the authors nor the Government provided such an estimate, which may serve enough grounds for contesting its constitutionality.

III. Law on exempting state road administration from paying the money necessary for compensating the losses incurred due to the exclusion of certain plots from the agricultural fund

ADEPT Comment: The Parliament decided to exempt the state road administration from paying the amount of 7 million lei due in the compensation fund for the losses incurred due to the exclusion from agricultural use of the plots whereby Ukrainka - Tokuz road is being build, with access to Zvizdocika locality. Noteworthy, it wasn't mentioned during the hearings whether local authorities on whose plots the road is to be built and who would have had extra-budget funds if the compensations were to be paid, were consulted or not on that matter.

IV. Law on the modification of the Law on Local Public Administration

ADEPT Comment: Under the Law on the modification of the Law on Local Public Administration issues on local council agenda shall be examined only if endorsed by the specialised commission, or the mayoralty and decentralised public service. In certain cases, at the initiative of 1/3 of the councillors, the council shall examine the aforesaid issues without the appropriate endorsements. This amendment was made in order to allow the council to pass decisions in cases when specialised commissions would not be able or be willing to do so for political or economic reasons.

V. Law on the ratification of the status of the Nuclear Research Institution

ADEPT Comment: Nuclear Research Institution is an international intergovernmental research organisation based in Dubna, Russian Federation, established in 1956. Republic of Moldova applied for membership in 1992. The membership is important for several reasons:

- Assistance is provided to the Academy of Science of the Republic of Moldova (in conducting theoretical and applied research and in training specialists);
- Moldovan scientists would have access to modern equipment in the international radiobiology and radio-medicine centres and to their data bases.

Previously, Republic of Moldova's debts accrued in 1992-2000 (around 2 million Dollars) were cancelled. In 2004-2008 Republic of Moldova annual quota would range between 20.000-25.000 USD.

VI. Draft law on the modification of the law on the fingerprint registration

ADEPT Comment: The draft approved by the Parliament in the first reading provides for the binding fingerprint recording to be stipulated in the laws on carabinieri troops, fiscal service, customs service, Information and Security Service, Centre for Fighting Economic Crimes and Corruption.

The issues raised a lot of controversy since many opposition and even majority faction deputies claimed that it breaches human rights. In response deputies were informed that they had already approved fingerprint recording back in 2002 in the Law on the Fingerprint Registration. Another argument in favour of accepting the modifications was the fact that in France all the citizens are obliged to go through fingerprint recording.

Noteworthy, under the new regulations of the US Embassy to Moldova any person applying for a US visa would have his/her fingerprints recorded.

VII. Draft law on the modification of the legislation on the production and circulation of alcohol products

ADEPT Comment: The law introduces new provisions to the Law on the production and circulation of ethylic alcohol and alcohol products, in particular stricter requirements on testing the alcohol in the specialized laboratories of the customs; recalling the license without the right of renewal for at least 3 years for sale of forfeited alcohol; forbidding the sale of alcohol beverages in the stores smaller than 20 square meters, etc. The law also introduces a number of sanctions for the sale of alcohol products without invoices, denying the access of control bodies to the production or retail facilities; sale the products without documents attesting their origin.

VIII. Draft law on the modification of the Law on Enforcement of the Penal Code

ADEPT Comment: The draft cancels the obligation to introduce a new form of punishment - community work, which was supposed to be enforced as of January 1, 2004. In addition the draft includes a set of modifications which would allow Ministry of Justice to organize certain territorial districts where the method would be put to a test. This last provision raised a lot of debates as it would mean a differentiated enforcement of the law in the country and depending of the place where the sentence is pronounced. For the very same crime different sentences would have been given, which runs counter to the law.

Parliament activity, December 15-19, 2003

26 December 2003

Apparently at the end of the year the Parliament decided to go on offensive probably viewing that the holiday season would ease the negative effects of their decisions, and would be a good occasion to cite the positive effects when reviewing the achievements of the year.

In only two days the deputies managed to adopt in the final reading the Conception of the State National Policy, a document severely criticised by political parties, researchers, men of culture and science alike. Moreover, it was criticised abroad as well, for the first time in the last 15 years the President of a neighbourhood country dubbed Moldovan ruling party as a totalitarian (Stalinist one).

On the other hand, as usual for the end of a session, Parliament examined a number of legal acts, which are to be enforced at the beginning of the new year. We shall consider some of them in a greater detail below.

I. Law on the Social Security Budget for Year 2004

ADEPT Comment: This is the second most important piece of legislation after the Law on the State Budget, as it affects all the citizens by establishing the taxes and fees.

The following taxes were set:

- 28% social security tax for employees working based on a work contract;
- 2% social security tax for individual insurance of the employees working based on a work contract or contracted to render services;
- 1.7 Lei on unit/hectare for insuring the owners of agricultural plots, regardless of the form of organisation;
- 4.5% for social insurance of the pensioners, handicapped employed in enterprises, public associations, etc;
- 10% of the net income for the founders of individual enterprises;
- 10% of the remuneration received for the services rendered (lawyers, notaries).

The law also raises the indemnities to be paid for children ranging 1.5-16 years old from 25 to 50 Lei and the ceiling of monthly income per family member eligible for indemnities from 18 to 100 Lei.

II. Law on measures for economic and financial recovery of economic agents in the field of agriculture

ADEPT Comment: The draft provides for measures to be taken in order to improve the situation in agricultural units restructured under the "Land" programme, which did not made them eligible for state support. It envisages supporting enterprises that stuck to the collective administration of property on land, and accrued huge debts to the state budget and penalties.

The law obliges Creditors Councils to conclude Memorandums with those enterprises so as to restructure their debts as of January 1, 2002 in line with the provisions of the Law on insolvency. This means that de facto those entities are insolvent, however several favourable terms allow them to recover.

III. Law on modifying the Law on cancelling the penalties and financial sanctions

ADEPT Comment: Under the modifications, penalties at the day of the enforcement of the law are cancelled in proportion of 80% to the agricultural producers. Opposition criticised the law on the grounds it favours those who breach the law to the detriment of those who comply with the law and pay taxes.

IV. Law on the modification of the Law on the Consumer Protection

ADEPT Comment: The law prohibits the import and sale of products that do not provide veridical information in Moldovan language or in Moldovan and Russian language.

V. Law on the modification and completion of legal acts on audio-visual advertising

ADEPT Comment: The law completes the list of restrictions provided for in the Code of Offence, thereby sanctioning the following:

- violation of the terms of airing the audio-visual programs established by the Audio-visual Coordinating Council and the Central Electoral Commission during the electoral campaign;
- airing on other frequencies or channels, breaching technical specifications, area or technical parameters as provided in the airing license;
- airing advertising by breaching other legal provisions.

Law on Advertising was also completed with new provisions:

- advertising should be loyal and honest;
 - advertising should be identified without any special knowledge and technical devices;
 - advertising should not mislead, nor should it infringe consumer interests;
 - in mass-media, ads should be separated by means of distinct comments or headings from other shows, printed materials, video, and audio;
 - subconscious advertising is prohibited;
 - ads should be in Moldovan language, and at the contractor's wish in Moldovan and other languages if the contractor wishes, so in line with the provisions of the Republic of Moldova law and international treaties Republic of Moldova is part of;
 - it shall be prohibited to use without authorisation state symbols, names of companies, enterprises, institutions or organisations.
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VI. Resolution on designation of a new membership of the Central Electoral Commission

ADEPT Comment: On December 16, 2003 expired the mandate of the first Central Electoral Commission established back in 1997 after the adoption of the Electoral Code. In compliance with the electoral law the Presidency, Supreme Magistracy Council and Parliament designated new members for a six-year mandate.

The following were appointed:

Eugeniu CLIM - Chair of the Court of Appeal, Balti;
Nicolai CHISEEV - former judge, jurist of honour;
Valentin VIZANT - Chief of the control department over the enforcement of the President orders, Protocol Service, and Secretariat of the President Apparatus. Representative of the Communist Party to the Chisinau electoral council.
Ion CUCU - lawyer,
Iurie CIOCAN - University professor at the Public Administration Academy of the Republic of Moldova Presidency,
Victor KOSTETKI - Dean of the Slavic University.
Mihai POALELUNGI - judge of the Supreme Court of Justice;
Maria MORARU - judge, Deputy Chair of the Economic Court of Appeal;
Iulia CIMPOI - judge at the Criuleni Rayon Court.

VII. Resolution on the structure and personnel of the Court of Accounts

ADEPT Comment: It was decided that the Court of Accounts personnel shall include 187 people, out of which 45 administrative apparatus. The structure of the Court would include the central apparatus including several departments and territorial structures in the Centre, South and North.

VIII. Resolution on changing the name of a parliamentary faction

ADEPT Comment: Based on an a ruling of a Constitutional Court it was decided that the changes in the name of the "Braghis Alliance" were null and void, as the law does not provide for changing a faction name (previously the name of the faction was changed to Social-Democratic Alliance and "Moldova Noastra" Alliance). This decision was severely criticised by the opposition on the grounds it breaches the autonomy of parliamentary factions and violates the Parliament Regulation, the Law on the Status of Deputy and other relevant laws.

IX. Draft law on the obligatory medical insurance fund for year 2004

ADEPT Comment: The draft passed in the first reading provides that the revenues and expenditures of the obligatory medical insurance fund for year 2004 would be 1.070.680,0 thousand Lei. The annual medical insurance was established at 441 Lei. Each employee would pay monthly 2% for the obligatory medical insurance. Experts are very sceptical with regard to the implementation of obligatory medical insurance as they believe neither the economy, nor the medical institutions are ready for its implementation. Furthermore, citizens would have to pay a considerable amount of money and still have to buy the medication and cover the cost of treating severe diseases. Nor are the international missions clear on whether Republic of Moldova is ready to embark on this reform.

X. Draft law on the audio-visual public institution

ADEPT Comment: The draft adopted in the first reading provides that audio-visual public institution will become a non-for-profit legal entity, operationally autonomous and editorially independent, which shall ensure a pluralism of opinions, right to complete and fast information, broadcasting on one or several administrative-territorial units. It shall be established by local public administration authorities in line with the law. The draft outlines the objectives of the institution, its rights and obligations. In great it copies the provisions of the Law on National Public Institution Teleradio-Moldova only adapting it to the scale of administrative-territorial unit.

It is worth mentioning that recently Chisinau Municipal Council approved a new organisational chart, thereby dissolving the Public Relations Department within which several audio-visual institutions were operating. Under the new organisational chart the latter are to re-registered as municipal enterprises.

Experts believe the law was designed to deprive Chisinau Mayoralty of the mass media which allegedly electioneer for the opposition.

XI. During the sessions of December 18-19, the Parliament adopted in the first reading a series of legal acts:

1. Modification and completion of the Law on Education (referring to the status of private institutions).
2. Modification of the Law on the Government (establishing a Trade Department).
3. Law on Cinema.